



General Assembly

**Substitute Bill No. 895**

January Session, 2009

\* SB00895INS\_\_030609\_\_ \*

**AN ACT CONCERNING UNINSURED MOTORIST CLAIMS AND  
NOTIFICATION OF UNDERINSURED MOTORIST CONVERSION  
COVERAGE.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-336a of the general statutes is repealed and  
2 the following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) Each insurer licensed to write automobile liability insurance in  
4 this state shall (1) offer, for an additional premium, underinsured  
5 motorist conversion coverage with limits in accordance with section  
6 38a-336, as amended by this act. The purchase of such underinsured  
7 motorist conversion coverage shall be in lieu of underinsured motorist  
8 coverage pursuant to section 38a-336, as amended by this act, and (2)  
9 include with each application and renewal notice for automobile  
10 liability insurance a written disclosure of the availability and the  
11 premium cost of underinsured motorist conversion coverage, along  
12 with a description of such coverage.

13 (b) Such underinsured motorist conversion coverage shall provide  
14 for the protection of persons insured thereunder who are legally  
15 entitled to recover damages from owners or operators of underinsured  
16 motor vehicles.

17 (c) Each insurer shall be obligated to pay to the insured, up to the

18 limits of the policy's underinsured motorist conversion coverage, after  
19 the limits of liability under all bodily injury liability bonds or  
20 insurance policies applicable at the time of the accident have been  
21 exhausted by payment of judgments or settlements. If the insured  
22 purchases such underinsured motorist conversion coverage, then in no  
23 event shall the underinsured motorist coverage be reduced on account  
24 of any payment by or on behalf of the tortfeasor or by any third party.

25 (d) The selection of coverage under this section shall apply to all  
26 subsequent renewals of coverage and to all policies or endorsements  
27 which extend, change, supersede or replace an existing policy issued to  
28 the named insured, unless changed in writing by any named insured.

29 (e) For purposes of this section, an "underinsured motor vehicle"  
30 means a motor vehicle with respect to which the sum of all payments  
31 received by or on behalf of the covered person from or on behalf of the  
32 tortfeasor are less than the fair, just and reasonable damages of the  
33 covered person.

34 [(f) The provisions of this section shall apply to all new and renewal  
35 policies issued on or after January 1, 1994.]

36 Sec. 2. Section 38a-336 of the general statutes is repealed and the  
37 following is substituted in lieu thereof (*Effective October 1, 2009*):

38 (a) (1) Each automobile liability insurance policy shall provide  
39 insurance, herein called uninsured and underinsured motorist  
40 coverage, in accordance with the regulations adopted pursuant to  
41 section 38a-334, with limits for bodily injury or death not less than  
42 those specified in subsection (a) of section 14-112, for the protection of  
43 persons insured thereunder who are legally entitled to recover  
44 damages from owners or operators of uninsured motor vehicles and  
45 underinsured motor vehicles and insured motor vehicles, the insurer  
46 of which becomes insolvent prior to payment of such damages,  
47 because of bodily injury, including death resulting therefrom. Each  
48 insurer licensed to write automobile liability insurance in this state

49 shall provide uninsured and underinsured motorists coverage with  
50 limits requested by any named insured upon payment of the  
51 appropriate premium, provided each such insurer shall offer such  
52 coverage with limits that are twice the limits of the bodily injury  
53 coverage of the policy issued to the named insured. The insured's  
54 selection of uninsured and underinsured motorist coverage shall apply  
55 to all subsequent renewals of coverage and to all policies or  
56 endorsements [which] that extend, change, supersede or replace an  
57 existing policy issued to the named insured, unless changed in writing  
58 by any named insured. No insurer shall be required to provide  
59 uninsured and underinsured motorist coverage to (A) a named  
60 insured or relatives residing in his household when occupying, or  
61 struck as a pedestrian by, an uninsured or underinsured motor vehicle  
62 or a motorcycle that is owned by the named insured, or (B) any  
63 insured occupying an uninsured or underinsured motor vehicle or  
64 motorcycle that is owned by such insured.

65 (2) Notwithstanding any provision of this section to the contrary,  
66 each automobile liability insurance policy issued or renewed on and  
67 after January 1, 1994, shall provide uninsured and underinsured  
68 motorist coverage with limits for bodily injury and death equal to  
69 those purchased to protect against loss resulting from the liability  
70 imposed by law unless any named insured requests in writing a lesser  
71 amount, but not less than the limits specified in subsection (a) of  
72 section 14-112. Such written request shall apply to all subsequent  
73 renewals of coverage and to all policies or endorsements which extend,  
74 change, supersede or replace an existing policy issued to the named  
75 insured, unless changed in writing by any named insured. No such  
76 written request for a lesser amount shall be effective unless any named  
77 insured has signed an informed consent form which shall contain: (A)  
78 An explanation of uninsured and underinsured motorist insurance  
79 approved by the commissioner; (B) a list of uninsured and  
80 underinsured motorist coverage options available from the insurer;  
81 and (C) the premium cost for each of the coverage options available  
82 from the insurer. Such informed consent form shall contain a heading

83 in twelve-point type and shall state: "WHEN YOU SIGN THIS FORM,  
84 YOU ARE CHOOSING A REDUCED PREMIUM, BUT YOU ARE  
85 ALSO CHOOSING NOT TO PURCHASE CERTAIN VALUABLE  
86 COVERAGE WHICH PROTECTS YOU AND YOUR FAMILY. IF YOU  
87 ARE UNCERTAIN ABOUT HOW THIS DECISION WILL AFFECT  
88 YOU, YOU SHOULD GET ADVICE FROM YOUR INSURANCE  
89 AGENT OR ANOTHER QUALIFIED ADVISER."

90 (b) An insurance company shall be obligated to make payment to its  
91 insured up to the limits of the policy's uninsured and underinsured  
92 motorist coverage after the limits of liability under all bodily injury  
93 liability bonds or insurance policies applicable at the time of the  
94 accident have been exhausted by payment of judgments or settlements,  
95 but in no event shall the total amount of recovery from all policies,  
96 including any amount recovered under the insured's uninsured and  
97 underinsured motorist coverage, exceed the limits of the insured's  
98 uninsured and underinsured motorist coverage. In no event shall there  
99 be any reduction of uninsured or underinsured motorist coverage  
100 limits or benefits payable for amounts received by the insured for  
101 Social Security disability benefits paid or payable pursuant to the  
102 Social Security Act, 42 USC Section 301, et seq. The limitation on the  
103 total amount of recovery from all policies shall not apply to  
104 underinsured motorist conversion coverage purchased pursuant to  
105 section 38a-336a, as amended by this act.

106 (c) Each automobile liability insurance policy issued on or after  
107 October 1, 1971, [which] that contains a provision for binding  
108 arbitration shall include a provision for final determination of  
109 insurance coverage in such arbitration proceeding. With respect to any  
110 claim submitted to arbitration on or after October 1, 1983, the  
111 arbitration proceeding shall be conducted by a single arbitrator if the  
112 amount in demand is forty thousand dollars or less or by a panel of  
113 three arbitrators if the amount in demand is more than forty thousand  
114 dollars.

115 (d) Regardless of the number of policies issued, vehicles or

116 premiums shown on a policy, premiums paid, persons covered,  
117 vehicles involved in an accident, or claims made, in no event shall the  
118 limit of liability for uninsured and underinsured motorist coverage  
119 applicable to two or more motor vehicles covered under the same or  
120 separate policies be added together to determine the limit of liability  
121 for such coverage available to an injured person or persons for any one  
122 accident. If a person insured for uninsured and underinsured motorist  
123 coverage is an occupant of a nonowned vehicle covered by a policy  
124 also providing uninsured and underinsured motorist coverage, the  
125 coverage of the occupied vehicle shall be primary and any coverage for  
126 which such person is a named insured shall be secondary. All other  
127 applicable policies shall be excess. The total amount of uninsured and  
128 underinsured motorist coverage recoverable is limited to the highest  
129 amount recoverable under the primary policy, the secondary policy or  
130 any one of the excess policies. The amount paid under the excess  
131 policies shall be apportioned in accordance with the proportion that  
132 the limits of each excess policy bear to the total limits of the excess  
133 policies. If any person insured for uninsured and underinsured  
134 motorist coverage is an occupant of an owned vehicle, the uninsured  
135 and underinsured motorist coverage afforded by the policy covering  
136 the vehicle occupied at the time of the accident shall be the only  
137 uninsured and underinsured motorist coverage available.

138 (e) For the purposes of this section, an "underinsured motor vehicle"  
139 means a motor vehicle with respect to which the sum of the limits of  
140 liability under all bodily injury liability bonds and insurance policies  
141 applicable at the time of the accident is less than the applicable limits  
142 of liability under the uninsured motorist portion of the policy against  
143 which claim is made under subsection (b) of this section.

144 (f) Notwithstanding subsection (a) of section 31-284, an employee of  
145 a named insured injured while occupying a covered motor vehicle in  
146 the course of employment shall be covered by such insured's otherwise  
147 applicable uninsured and underinsured motorist coverage.

148 (g) (1) No insurance company doing business in this state [may]

149 shall limit the time within which any suit may be brought against it or  
150 any demand for arbitration on a claim may be made on the uninsured  
151 or underinsured motorist provisions of an automobile liability  
152 insurance policy to a period of less than three years from the date of  
153 accident, provided, in the case of an underinsured motorist claim the  
154 insured may toll any applicable limitation period (A) by notifying such  
155 insurer prior to the expiration of the applicable limitation period, in  
156 writing, of any claim which the insured may have for underinsured  
157 motorist benefits and (B) by commencing suit or demanding  
158 arbitration under the terms of the policy not more than one hundred  
159 eighty days from the date of exhaustion of the limits of liability under  
160 all automobile bodily injury liability bonds or automobile insurance  
161 policies applicable at the time of the accident by settlements or final  
162 judgments after any appeals.

163 (2) Notwithstanding the provisions of subdivision (1) of this  
164 subsection, in the case of an uninsured motorist claim, if the motor  
165 vehicle of a tortfeasor is an uninsured motor vehicle because the  
166 automobile liability insurance company of such tortfeasor becomes  
167 insolvent or denies coverage, no insurance company doing business in  
168 this state may limit the time within which any suit may be brought  
169 against it or any demand for arbitration on a claim may be made on  
170 the uninsured motorist provisions of an automobile liability insurance  
171 policy to a period of less than one year from the date of receipt by the  
172 insured of written notice of such insolvency of, or denial of coverage  
173 by, such automobile liability insurance company.

174 (3) If an insurer chooses to exercise its right of subrogation pursuant  
175 to the terms of an automobile liability policy for an uninsured motorist  
176 coverage claim, such insurer shall seek under such action payment for  
177 any deductible paid by the insured to the insurer under such coverage,  
178 and shall refund to the insured such deductible if the insurer recovers  
179 such deductible.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>October 1, 2009</i>	38a-336a
Sec. 2	<i>October 1, 2009</i>	38a-336

**INS**      *Joint Favorable Subst.*